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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,283	07/25/2003	Daniel G. Zwier	PermaLoc 4	4251
23474	7590	06/28/2004	EXAMINER	
FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1699			ALIMENTI, SUSAN C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/627,283

Applicant(s)

ZWIER, DANIEL G.

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 7,8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/29/03
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 7-8 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species 1,3 and 4, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7 June 2004.
2. Applicant's election with traverse of Species 2 in the reply filed on 7 June 2004 is acknowledged. The traversal is on the grounds that there are only two species, one alleged specie having only one fastener and the second specie having a dual fastener configuration. This is not found persuasive because several different structures and embodiments are disclosed in the drawings and by applicant's own admission (Specification, Brief Description of the Drawings).

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Chancellor (US 3,314,193).

Chancellor discloses a lawn edging strip connector comprising first and second connector members S (Chancellor, Figure 7) connectable to a lawn-edging strip (Figure 1-2), a fastener

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assembly 35 defining a pivot axis (also 35). The connector members are pivotally attached through fastener assembly 35 and infinitely adjustable between a first position where the longitudinal axis of both connectors are aligned and a second position where said axis are out of alignment. Said connectors are preferably made of a plastic or a similar type resin (Chancellor, col.3, lns.17-25). The connector members further comprise a stop 30 which is configured to limit movement of the lawn-edging strip (Chancellor, Figure 6).

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chancellor.

Chancellor discloses the claimed invention except the fastener assembly is not a single nut and bolt. Instead Chancellor utilizes a rivet and teaches that this hole and rivet pivot connection can be achieved by using any "suitable fastening device" (Chancellor, col.4, lns.59-63). Clearly a nut and bolt is a common and well-known fastening device that would provide a pivoting engagement. It would have been obvious to one having ordinary skill in the art to modify Chancellor's lawn-edging strip and connector by replacing the rivet with a nut and bolt since it is an art recognized equivalent fastening means and does not change the scope of the invention.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chancellor as applied to claim 1 above, and further in view of Richet et al. (US 2002/0189162 A1).

Chancellor discloses the claimed invention except it is not positively disclosed that the connecting members can be inclined 0-90° relative to one another's longitudinal axis. Richet et al. (Richet hereafter) discloses a similar lawn-edging strip and connector, having connector members 10 that pivot about axis point 28, 32 (Richet, Figure 7) to create a 90° angle in order to fit tightly around the corner of a building (Richet, Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Chancellor's device capable of pivoting to a 90° angle in order to create sharp corners in an ornamental bed or to fit tightly around the corner of a building.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

  
MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER